

# Reclamation Manual

## Policy

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- Subject:** Reclamation Consultation, Conservation, and Recovery Activities Under the Endangered Species Act of 1973, as Amended
- Purpose:** The purpose of this policy is to describe Reclamation's commitment pursuant to applicable federal law to: (1) support the goals and requirements of the Endangered Species Act to protect, conserve, and recover threatened and endangered species, their habitat, and the ecosystems upon which they depend, and (2) support activities which are intended to avoid future listings.
- Authority:** Federal Reclamation law, including individual project authorizations and contracts; the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (hereafter, the Act); the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661 *et seq.*); the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-4 *et seq.*); and, for projects authorized after July 9, 1965, the Federal Water Project Recreation Act, as amended (16 U.S.C. 4601-12 *et seq.*).
- Contact:** Environmental and Planning Coordination Office, D-5100
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1. **Definitions** (as used herein).

- A. **Candidate Species** means plant and animal taxa considered for possible addition to the List of Endangered and Threatened Species. These are taxa for which the National Marine Fisheries Service or the Fish and Wildlife Service has on file sufficient information on the biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority listing actions.
- B. **Critical Habitat** means:
- (1) Specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act (the Act), on which are found those physical or biological features (constituent elements):
    - (a) Essential to the conservation of the species; and
    - (b) Which may require special management consideration or protection

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- (2) Specific areas outside the geographical area occupied by the species, at the time it is listed in accordance with provisions of section 4 of the Act, upon determination by the Secretary that such areas are essential for the conservation of the species.
- C. **Imperiled Species** means any species of fish, wildlife, or plant which could become listed as endangered or threatened pursuant to the Act absent actions to protect and conserve them.
- D. **Listed Species** mean any species of fish, wildlife, or plant which has been determined to be threatened or endangered under section 4 of the Act.
- E. **Proposed Species** means any species of fish, wildlife, or plant proposed in the *Federal Register* to be listed under section 4 of the Act.
- F. **Species** includes any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

## 2. General Policy.

- A. **Consultations.** Reclamation will undertake or support activities to determine the effects that Reclamation's actions (both proposed actions and existing project operations) may have on listed or proposed species, or on their designated or proposed critical habitat. Reclamation will ensure, through consultations and/or conferences pursuant to section 7(a)(2) of the Act and any applicable regulations or guidelines issued by the U.S. Fish and Wildlife Service or National Marine Fisheries Service, that its actions are not likely to jeopardize the continued existence of any listed or proposed species, or result in the adverse modification or destruction of designated or proposed critical habitat.
- B. **Conservation Actions.** Reclamation will review the programs administered by it and will utilize such programs and its authorities in furtherance of the purposes of the Act by taking appropriate actions to protect and conserve listed, proposed, candidate, and imperiled species, their habitat, and the ecosystems upon which they depend.
  - (1) Reclamation will support and carry out appropriate conservation actions where doing so would contribute to the recovery of, or would be likely to reduce the costs of recovery for, a listed or proposed species or reduce the chances of candidate or imperiled species becoming a listed or proposed species.
  - (2) Reclamation will also support appropriate recovery plan activities when an existing Reclamation facility, program, or resource under its control is identified in a

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recovery plan for a listed species, whether or not project operations are a principal or direct cause of the listing of the species which is the subject of a plan.

- C. **Goals.** The goals of Reclamation's participation in consultation, conservation, and recovery activities are to:
- (1) Further the purposes of the Act, particularly by proactively undertaking actions which contribute to the conservation of listed, proposed, candidate, and imperiled species and their habitats;
  - (2) Minimize the adverse effects of Reclamation's actions, both proposed and on-going, upon listed, proposed, candidate, and imperiled species.
  - (3) Reduce the potential for more restrictive, less flexible requirements which could result from issuance of a conditioned biological opinion or a jeopardy opinion with a reasonable and prudent alternative were a listed species to further decline;
  - (4) Avoid or minimize circumstances that would limit fulfillment of authorized project purposes;
  - (5) Undertake activities under the Act in a way which avoids or minimizes social, economic, and other impacts on water and power customers and which avoids or minimizes conflicts with any property or contractual rights.
  - (6) Fulfill the Federal trust responsibility to Indian Tribes as described in Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," dated June 5, 1997.
  - (7) Cooperate with State and local agencies to resolve water resource issues in concert with the conservation of listed, proposed, candidate and imperiled species.
- D. **Approach.** Reclamation will consider, to the extent of its authority, a multi-species, habitat and ecosystem-based approach to developing and participating in programs for the recovery or conservation of listed, proposed, candidate, and imperiled species.
- E. **Costs of Conservation Actions.** In order to support and carry out appropriate conservation actions in furtherance of the Act, Reclamation will, where practicable, develop cost-sharing partnerships in order to conserve and recover listed, proposed, candidate, or imperiled species and their habitats. However, developing cost-share partnerships is not a pre-condition of taking actions to conserve listed or candidate species.

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- F. **Costs of Consultations.** The portion of the costs of implementing a biological opinion rendered pursuant to section 7(a)(2) of the Act which is to be treated as a project cost will be determined on a case-by-case basis taking into consideration all of the circumstances involved. Costs treated as project costs will be allocated among project purposes in the normal manner, with any costs allocable to reimbursable project purposes being borne by project beneficiaries in the appropriate manner.
3. **Effective Date.** This policy will be effective immediately.